



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

**Petition to Remove Trustee, to Appoint Public Administrator as Trustee, and To
Compel Trustee to Account**

Dale W. Balagno DOD: 3-16-13		JOSEPH BALAGNO , Beneficiary, is Petitioner. Petitioner states: <ul style="list-style-type: none">• The Revocable Trust of Dale W. Balagno was established via Declaration of Trust dated 3-6-13. The trust corpus consists primarily of bank and investment accounts held with several banking institutions.• The Trustee of the Trust is Nicholas T. Kovacevich and purports to be acting in that capacity.• The beneficiaries are Lori Jo Brown, Linda Sue Balagno, Joseph Dale Balagno (Petitioner), and Mary E. Pond.• Petitioner is informed and believes that the Trustee has conveyed real property, other accounts, and personal property of the trust to Mary E. Pond without accounting, notice or acknowledgment whatsoever to Petitioner and other beneficiaries. Only upon Petitioner's contacting the various banking and investment institutions did Petitioner learn of such. See attached Trust Transfer Deed dated 3-27-13.• Petitioner also believes the trustee has distributed other investment accounts to Ms. Pond or to himself without notice, and/or is concealing the identity of other assets comprising the trust estate. Petitioner is informed and believes that certain accounts have been closed or blocked without notice or accounting to beneficiaries.• Petitioner has asked the trustee for a list of assets; however, he has refused to comply with such request. Petitioner has been forced to freeze various accounts as a result.• Petitioner seeks an order removing the trustee on grounds that he refuses to respond after demands having been made, conveys property without notice or accounting to either Ms. Pond or himself, changes mailing addresses and ownership of various accounts to the name of Ms. Pond, and refuses to correspond or communicate with Petitioner and other beneficiaries.	NEEDS/PROBLEMS/COMMENTS: <u>Continued from 6-24-13, 7-29-13, 8-13-13 (Settlement Conf), and 8-20-13 (Continued Settlement Conf)</u> <u>Minute Order 6-24-13:</u> Continued to 7-29-13. <u>Minute Order 7-29-13:</u> Mr. Gromis is appearing specially for Nicholas Kovacevich. The Court indicates to the parties that Mr. Kovacevich is not to advise the beneficiaries, but is to act as a trustee only. Parties are directed to return to Court at 10:30 a.m. to engage in settlement discussions. Continued to 9-9-13 at 9:00 a.m.; set on 8-13-13 at 10:00 a.m. for Settlement Conference. <u>Note:</u> These Examiner Notes were originally prepared for the hearings of 6-24-13 and 7-29-13. Trustee Nicholas Kovacevich filed a Declaration on 8-8-13 that states extensive documentation was delivered to Attorney Armo; however, this has not been reviewed by Examiner as it was filed for Settlement Conference. Examiner Notes are not provided for Settlement Conference. <u>Minute Order 8-13-13 (Settlement Conference):</u> Present: David Gromis. Also present in the courtroom are Mr. Armo's clients. The Court is informed that Mr. Armo is out of state, but will be available next week. Continued to 8-20-13. <u>Minute Order 8-20-13:</u> With regard to account #xxx005, the Court orders the Fresno Fire Department Credit Union to provide Mr. Kovacevich, the trustee all bank statements for the period 2013 to the present. Counsel is directed to prepare the order. Set on 9-9-13 for Status Hearing. <u>SEE ADDITIONAL PAGES</u>
Cont. from 062413, 072913, 081313, 082013			
<input type="checkbox"/>	Aff.Sub.Wit.		
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<input type="checkbox"/>	Inventory		
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<input type="checkbox"/>	Letters		
<input type="checkbox"/>	Duties/Supp		
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<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
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<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCC/JEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
<u>SEE ADDITIONAL PAGES</u>		Reviewed by: skc	
		Reviewed on: 9-3-13	
		Updates:	
		Recommendation:	
		File 7A – Balagno	

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Petitioner states a trustee may be removed on petition under §§ 17200, 15642a for breach or other good cause, including hostility. Remedies include compel performance, enjoin trustee from further breach, equitable lien on property. Petitioner believes the trustee is intentionally refusing to communicate so to make further conveyances to Ms. Pond or himself without providing notice or accounting to other beneficiaries.

Petitioner prays for an Order:

1. Removing Nicholas T. Kovacevich as trustee of the Trust of Dale W. Balagno;
2. Ordering Nicholas T. Kovacevich account for his actions as trustee;
3. Appointing the Public Administrator as successor trustee;
4. Ordering Nicholas T. Kovacevich bear his own costs and attorney fees for defense of this action;
5. Ordering Nicholas T. Kovacevich retitle the trust estate property in the name of the trust;
6. For all costs of suit incurred; and
7. For such other and further relief as the Court may deem just and proper.

Petitioner provides various citations for the request.
See Petition and supplemental declaration filed 6-19-13.

NEEDS/PROBLEMS/COMMENTS:**Examiner's Note (Relevant dates/events):**

- DW Balagno created trust on 3-6-13
- DW Balagno DOD 3-16-13
- Letter dated 4-5-13 from Linda Balagno and Lori Brown imposed deadline of 4-11-13 for info
- Letter dated 4-16-13
- Petition filed 5-9-13 (without copy of trust or other relevant information, such as the date of death of the settlor)
- Declaration w/ copy of trust and additional information per Examiner Notes was filed 6-19-13
- Notice of Hearing was mailed on 6-24-13.

Examiner's Note (Trust details):

- DW Balagno created trust on 3-6-13 (10 days prior to his death on 3-16-13)
- It appears the trust was created by an LDA (not an attorney)
- It appears that Mary E. Pond (unknown relation) also created a trust on the same date as petitioner and transferred her property into it.
- Trust names three Successor Trustees: Nicholas T. Kovacevich (a local CPA), Jo Ann Barnes (unknown relation), and Mary E. Pond (unknown relation)
- The Trust itself specifically distributes personal property to DW Balagno's three children and Mary E. Pond equally.
- The Trust Property Schedule defines personal property, and then goes on to state that the real property at 4157 E. Alta in Fresno is "**NOT IN TRUST**" and is held in joint tenancy with Linda Sue Balagno, one of the daughters.

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS (Continued):

1. The petition states Petitioner has asked the trustee for a list of assets, but the trustee refused to comply with such request. However, this petition to remove the trustee was filed less than 60 days after the death of the settlor.

Petitioner's declaration attaches a copy of a letter from beneficiaries Linda Balagno and Lori Brown (not Petitioner) dated 4-5-13 (3 weeks after the death of the settlor) demanding a list of items by 4-11-13, which gave the new trustee 6 days to comply, only three weeks after becoming successor trustee. Attorney Armo sent another letter on 4-16-13.

Examiner notes that Probate Code § 16061.7(f) allows the trustee 60 days for just the initial notification to beneficiaries of the status of the trust changing to irrevocable, and Probate Code 16061 requires reasonable request by beneficiary for information relating to the administration of the trust. Further, Probate Code § 17200(b)(7)(C) allows a petition to be filed under this section if the trustee has failed to account within 60 days of reasonable request.

This petition was filed less than 60 days after the death of the settlor, and it does not appear that the trustee was afforded appropriate time for response before filing. Petitioner's declaration at #9 states that now 60 days have elapsed. **However, this petition still appears to have been filed prematurely. Need authority.**

2. Petitioner states the attached deed **evidences conveyance of trust real property** to Ms. Pond. However, the attached deed is a transfer of unspecified real property from Grantor Mary E. Pond to Mary E. Pond, Trustee of the Mary E. Pond Revocable Trust **dated 3-6-13 (Settlor still alive)**, with no mention of this trust or trustee, and no address specified to clarify for the Court the property that is the subject of this petition.

When Petitioner provided a declaration in response to Examiner Notes for the last hearing, Petitioner explained that the property was originally held in the trust of Dale Balagno, and the attached deed presupposes that title to the subject property was conveyed to Mary Pond previously, without notice to Petitioner or beneficiaries.

However, again, the deed is dated 3-6-13, which is prior to the Settlor's death. If property was transferred to Ms. Pond prior to that date, then the alleged transfer occurred prior to the Settlor's death. Further, the copy of the Trust and Trust Property Schedule provided with the declaration does not appear to reference any real property subject to the trust. Rather, the body of the trust specifically references personal property only, and the Trust Property Schedule specifically states that the Settlor's real property located at 4157 E. Alta in Fresno is **"NOT IN TRUST"** and is **held in joint tenancy with LINDA SUE BALAGNO**.

Examiner notes that the trust itself appears to be a template-type document prepared by a document assistant, rather than an attorney, with a designated spot to list real property, but instead the language added states that the Settlor's real property located at 4157 E. Alta in Fresno is "NOT IN TRUST" and is held in joint tenancy with LINDA SUE BALAGNO.

Therefore, if this petition goes forward, need clarification: What property is Petitioner alleging was an asset of the trust that the successor trustee Nicholas T. Kovacevich improperly transferred to Ms. Pond, and when?

3. Alternate named successor trustee **Jo Ann Barnes** was not served with Notice of Hearing. Need proof of service of Notice of Hearing at least 30 days prior to the hearing on Jo Ann Barnes. Probate Code § 17203(a)(1).

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS (Continued):

4. Probate Code § 15660.5 provides the requirements for appointment of the Public Administrator, including a finding that no other qualified person is willing to act as trustee. Examiner notes that the trust names two alternate successor trustees, Jo Ann Barnes and Mary E. Pond. *Jo Ann Barnes was not served with notice of hearing (see #3 above)*. The Court may require clarification in order to make the findings necessary to appoint the Public Administrator.
 5. **If this petition goes forward, need consent to serve from Public Administrator.** Probate Code § 15660.5(a)(2)(B). *Note that Probate Code § 15660.5(a)(2)(A) allows the Court to appoint the Public Administrator to if the trust is to immediately be distributed according to its terms. However, this does not appear to be the case. Therefore, need consent per Probate Code § 15660.5(a)(2)(B).*
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Atty

Armo, Lance E. (for Joseph Balagno – Beneficiary – Petitioner)

Atty

Gromis, David Paul (for Nicholas Kovacevich – Trustee)

Status Hearing

Dale W. Balagno		<p>JOSEPH BALAGNO, Beneficiary, filed a Petition to Remove Trustee, to Appoint Public Administrator as Trustee, and to Compel Trustee to Account.</p> <p>NICHOLAS T. KOVACEVICH, Trustee, filed a Declaration on 8-8-13 (prior to Settlement Conference) indicating information provided to Petitioner's attorney.</p> <p>At Settlement Conference on 8-20-13, the Court set this status hearing.</p> <p>Minute Order 8-20-13: With regard to account #xxx005, the Court orders the Fresno Fire Department Credit Union to provide Mr. Kovacevich, the trustee all bank statements for the period 2013 to the present. Counsel is directed to prepare the order. Set on 9-9-13 for Status Hearing.</p> <p><i>Note: Court Order to Release Bank Statemenet sof Fresno Fire Dept Credit Union was signed by Judge Oliver on 8-23-13.</i></p>	<p>NEEDS/PROBLEMS/COMMENTS:</p>	
DOD: 3-16-13				
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			<p>Reviewed by: skc</p> <p>Reviewed on: 9-3-13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 7B – Balagno</p>	

